AGREEMENT BETWEEN THE CITY OF RAPID CITY AND HAY LAND, LLC
FOR EXCHANGE OF PROPERTY (SEGER DRIVE RECONSTRUCTION)

This Agreement is made this ____ day of ______________, 2017, by and between the
CITY OF RAPID CITY, a municipal corporation of the State of South Dakota (hereinafter the
“City”), of 300 Sixth Street, Rapid City, South Dakota 57701, and HAY LAND, LLC
(hereinafter the “Owner”), of 3401 Universal Drive, Rapid City, South Dakota, 57702.

WHEREAS, Owner owns certain real property in Rapid City as described below; and

WHEREAS, the City also owns certain real property adjacent to Owner’s property; and

WHEREAS, the City wishes to acquire a portion of Owner’s property for purposes of
constructing a street and associated improvements; and

WHEREAS, Owner has agreed to convey a portion of its property to the City in exchange
for the City’s conveyance of the property it owns adjacent to Owner’s property; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual
agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part
of this Agreement and are incorporated herein by this reference as if fully set forth herein as
agreements of the parties.

2. H-Lot. Owner will convey to the City property to be described as follows:

Lot H-6 of the unplatted portion of the NE¼ lying North of I-90, Less
Lots H2, H3, H4, and H5, of Section 30, T2N, R8E, BHM, Rapid City,
Pennington County, South Dakota.

Lot H-6 is estimated to be 40,348 square feet, and is shown on Exhibit A, attached hereto and
incorporated herein by this reference.
3. **Consideration.** The City agrees to provide the following consideration to Owner in exchange for its deed of the above-described property:

a. The City agrees to facilitate the vacation of March Avenue and all existing N. LaCrosse Street right-of-way in the NE¼ of Section 30 which is no longer needed for highway purposes, as shown on attached Exhibit B.

b. The City agrees to transfer to Owner via quitclaim deed the excess property east of N. LaCrosse St., to be described as Lot A of Lot H-6 of the NW¼ of Section 30, T2N, R8E, BHM, as shown on Exhibit C, attached hereto and incorporated herein by this reference.

4. **Owner Easements.** Owner also agrees to provide the following easements:

a. After transfer, Owner will dedicate drainage and utility easements on the property acquired from the City, through deed or vacation of right of way, to the extent necessary to construct and maintain necessary regional facilities. The drainage easement areas are shown on Exhibit D, attached hereto and incorporated herein by this reference.

b. Owner will also convey to the City a temporary construction easement over the unplatted portion of the NE¼ of Section 30, T2N, R8E, BHM, as shown on Exhibit E, attached hereto and incorporated herein by this reference. The temporary construction easement is estimated to be 246,540 square feet.

c. Any right-of-way vacated or property transferred to Owner through the actions described above may be utilized by the City as a Temporary Construction Easement for the purpose of constructing the project entitled, “Seger Drive Reconstruction, Project No. 15-2268.” The Temporary Easement shall be effective from the date of this agreement to December 31, 2020.

5. **Warranties of City.**

a. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the street in the easement area.

b. All work by City shall be done in a workmanlike manner.

c. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover and drainage unchanged from its natural drainage ways.
6. **Right-of-Way-Obligations.** Neither the City’s acquisition of the H-Lot as described herein nor any other term of this Agreement shall operate to waive, release or otherwise change the city’s subdivision requirements as provided in applicable city ordinances, resolutions, policies and procedures.

7. **Authority.** This Agreement is made pursuant to the authority granted in SDCL 9-27-34.1 and SDCL 6-5-4.

8. **Costs of Recording.** All recording fees for the easements and deeds contemplated herein shall be paid by City.

9. **Recording this Agreement.** Either party may record this Agreement at its option and expense.

10. **Survival of Representations and Warranties.** All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the easement documents contemplated by this Agreement.

11. **Default.** City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for Owner’s breach of this Agreement, including the right to specific performance.

12. **Waivers.** The failure by one party to require performance of any provision herein shall not affect that party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

13. **Time.** Time is of the essence of this Agreement.

14. **Effect of Agreement.** This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Owner and their respective successors and assigns.

15. **Integration.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

16. **Amendments.** This Agreement may only be amended by a written document duly executed by all parties.

17. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

18. **Severability.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
19. **Construction.** This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. **Headings.** The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

21. **Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

HAY LAND, LLC

By ________________________________

Its ________________________________

State of ____________________________ )

ss.

County of __________________________ )

On this the _____ day of ______________, 2017, before me, the undersigned officer, personally appeared ____________________________, who acknowledged him/herself to be the __________________________ of HAY LAND, LLC, a South Dakota limited liability company, and that as such __________________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)  
Notary Public – South Dakota

My Commission Expires ____________________
By

Steve Allender, Mayor

Attest

Pauline Sumption, Finance Officer

(seal)

State of South Dakota  
County of Pennington  

ss.

On this the _____ day of __________________, ______, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

Notary Public - South Dakota
My Commission Expires _________________
A PORTION OF MARCH AVENUE TO BE VACATED IN THE NW1/4 AND A PORTION OF MARCH AVE AND N. LACROSSE ST TO BE VACATED IN THE NE1/4 OF SECTION 30, T2N, R8E, BHM RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.

PREVIOUSLY ACQUIRED R.O.W. TO BE VACATED CONTAINING 1.51 AC (65611 SQ FT) MORE OR LESS

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NOTE: THE COORDINATES, DISTANCES, AND AREAS SHOWN ON THIS PLAT ARE BASED ON THE SOUTH DAKOTA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD 83/2011). SEC=0.999792286

EXHIBIT B
CITY OF RAPID CITY
PERMANENT DRAINAGE AND UTILITY EASEMENTS
LOT A OF LOT H5 IN THE NE1/4NW1/4; AND THE
UNPLATTED PORTION OF THE NE1/4 AND VACATED
MARCH AVE LYING NORTH OF I-90, LESS LOTS H2,
H3, H4, AND H5
SECTION 30, T2N, R6E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA
OWNER: HAYLAND LLC

LEGAL

- PERMANENT DRAINAGE EASEMENT
- PERMANENT UTILITY EASEMENT
- FOUND PROPERTY MONUMENT MARKED "RENNER & ASSOC. LS 9213"
- PROPERTY AS DESCRIBED
- PROPERTY LINE
- EXISTING EASEMENT

LINE TABLE

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PERMANENT UTILITY EASEMENT
(THIS EXHIBIT)
CONTAINING 355 SQ FT +/-

PERMANENT UTILITY EASEMENT
(THIS EXHIBIT)
CONTAINING 307 SQ FT +/-

PERMANENT DRAINAGE EASEMENT
(THIS EXHIBIT)
CONTAINING 0.25 AC
10900 SQ FT ±

UNPLATTED PORTION OF THE NE1/4
AND VACATED MARCH AVE
LYING NORTH OF I-90
LESS LOTS H2, H3, H4, AND H5
SECTION 30, T2N, R6E, BHM

NOTE:
The coordinates, distances, and areas shown on
this plat are based on the South Dakota State
plane coordinate system, South Zone, (NAD
83/2011). SF=0.999792266

EXHIBIT D